


Government of the District of Columbia
Office of the Chief Financial Officer



Jeff DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeff DeWitt
Chief Financial Officer 

DATE: October 16, 2014

SUBJECT: Fiscal Impact Statement – Public Space Enforcement Amendment Act of 2014

REFERENCE: Bill 20-905, Draft Committee Print as shared with the Office of Revenue Analysis on October 10, 2014

Conclusion

Funds are not sufficient in the proposed FY 2015 through FY 2018 budget and financial plan to implement the bill.

The District Department of Transportation is required to develop a comprehensive plan to care for federal reservations and will require additional resources that cannot be quantified at this time.

Background

The bill establishes enforcement authority for the District Department of Transportation (DDOT) to enforce public space rules. Currently, most public space violations are enforced under the authority of the Litter Control Administration Act of 1985¹ (“Litter Control Act”) - an act not directly related to type of public space activities that DDOT oversees.

DDOT’s new enforcement authority will fall under the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985² (“Civil Infractions Act”). The bill gives DDOT the authority to inspect private property or private work in public space, issue civil fines under the Civil Infractions Act, and issue compliance orders to require a person or entity to rectify a public space violation.

If a person or entity would like to challenge a compliance order or alleged violation through the Office of Administrative Hearings (OAH), they would have fifteen days from the receipt of the

¹ Effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code § 6-2901 *et seq.*).

² Effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*).

notice³ to request a hearing. If no response has been received within fifteen days, DDOT can abate the problem and charge the violator for up to three times the cost of abatement. In cases where DDOT immediately abates a hazardous condition, the alleged violator can request an expedited hearing within five days of notice, resulting in a decision from OAH within seventy-two hours. The District has the authority to place a lien on the property for any unpaid costs owed to the District as a result of the District abating the violation.

The bill also updates the Department of Transportation Establishment Act of 2002⁴ (DDOT Establishment Act") to delineate enforcement authorities assigned to all public space violations, including airspace, conduit, public structures, construction in public space, and the abatement of dangerous conditions. The bill includes a clarification that signs located on publically controlled property or public space can be enforced under the Civil Infractions Act and the DDOT Establishment Act, while signs on private property will continue to be enforced under both the Civil Infractions Act and the District's construction codes. The bill ensures that DDOT's enforcement actions will continue to be adjudicated through OAH.

A few additional changes in the bill are to transfer the authority to issue rules and charge rent for the occupancy and use of public space from the Council to the Mayor, remove the Council's authority to establish parking regulations around the Municipal Center,⁵ and increase the maximum financial penalty for a violation of the rental and utilization of public space from \$300 to \$1,000.⁶ The bill also requires DDOT to develop, implement, and enforce a comprehensive plan to maintain federal reservations that were transferred to the District's jurisdiction as public space ("triangle parks").⁷

Financial Plan Impact

Funds are not sufficient in the proposed FY 2015 through FY 2018 budget and financial plan to implement the bill. The bill establishes enforcement authority within DDOT so that violations are no longer enforced under the Litter Control Act. The public space issues enforced and the manner in which they are adjudicated are not changing. DDOT will need to adjust its systems to align with the allowable fee structures associated with the Civil Infractions Act, but any costs associated with those changes can be absorbed within existing resources.

The requirement for DDOT to develop and enforce a comprehensive maintenance plan for triangle parks requires additional resources that cannot be absorbed. While DDOT has jurisdiction over these parks, it does not have a plan to actively maintain them. The required resources cannot be quantified at this time.

³ The bill also allows DDOT to provide notice on the property or structure alleged to be in violation and on the DDOT website.

⁴Effective May 21, 2002 (D.C. Law 14-137; § 50-921.01 *et seq.*).

⁵ The Municipal Center includes tax squares 490, 491, and 533 (D.C. Courts and the Metropolitan Police Department Headquarters).

⁶ The bill allows this fee to only be assessed one time. Current law allows the fee to be assessed for each day of the violation.

⁷ These open spaces located at the intersection of two streets are often referred to as triangle parks.